

## **REMARKS**

Claims 22-89 are pending in the Application and all have been rejected in the Office action mailed December 11, 2008. Claims 22, 44, 57, 70, 74, and 89 have been amended and claim 72 has been cancelled by this response. Claims 22, 44, 57, 70, and 74 are independent claims from which claims 23-43, 45-56, 58-65 and 67-69, 71 and 73, and 75-89 depend, respectively. Applicants request reconsideration of pending claims 22-65 and 67-89, in light of the remarks set forth below.

As an initial matter, Applicants have been unable to find cited references Rom (US 5,515,509) and Antunes, et al. (US 5,414,731) on any PTO/SB/08 or PTO-892 form of record in the Application. Applicants respectfully request that the Office make these cited references of record in the Application by submitting a PTO-892 form listing Rom and Antunes.

### **Amendments to Claims**

Claims 22, 44, 57, 70, and 74 have been amended to recite features of dependent claim 72, which has been cancelled. Applicants respectfully submit that no new matter is added by these amendments.

Claim 89 has been amended to correct a noted minor typographical error. Applicants respectfully submit that no new matter is added by this amendment.

### **Rejections of Claims**

Claims 22, 23, 25, 38-45, 55-58, 63-65, 69, 74, 75, 77, and 89 were rejected under 35 U.S.C. §103(a) as being unpatentable over Gillig, et al. (US 5,367,558, hereinafter "Gillig") in view of Sainton, et al. (US 20050159179, hereinafter "Sainton"). Claims 33, 34, 53, 54, 84, and 85 were rejected under 35 U.S.C. §103(a) as being unpatentable over Gillig and Sainton, in view of Allard, et al. (US 5,422,656, hereinafter "Allard"). Claims 24 and 76 were rejected under 35 U.S.C. §103(a) as being unpatentable over Gillig and Sainton, in view of Davis, et al. (US 5,453,986, hereinafter "Davis"). Claims 26, 27, 46, 47, 59, 60, 78, and 79 were rejected under 35 U.S.C. §103(a) as being unpatentable over Gillig and Sainton, in view of Rom (US 5,515,509).

Claims 28, 29, 48, 49, 61, 80, and 81 were rejected under 35 U.S.C. §103(a) as being unpatentable over Gillig and Sainton, in view of Antunes, et al. (US 5,414,731, hereinafter "Antunes"). Claims 30 and 50 were rejected under 35 U.S.C. §103(a) as being unpatentable over Gillig and Sainton, in view of Sonnendorfer, et al. (US 5,406,271, hereinafter "Sonnendorfer"). Claims 31, 32, 51, 52, 62, 82, and 83 were rejected under 35 U.S.C. §103(a) as being unpatentable over Gillig and Sainton, in view of Perkins (US 5,159,592). Claim 35-37, 67, 68, and 86-88 were rejected under 35 U.S.C. §103(a) as being unpatentable over Gillig and Sainton, in view of Fishbine, et al. (US 5,222,152, hereinafter "Fishbine"). Claims 70 and 71 were rejected under 35 U.S.C. §103(a) as being unpatentable over Gillig in view of Sainton. Claim 72 was rejected under 35 U.S.C. §103(a) as being unpatentable over Gillig and Sainton, in view of Davis. Claim 73 was rejected under 35 U.S.C. §103(a) as being unpatentable over Gillig and Sainton, in view of Fishbine. Applicants respectfully traverse the rejections.

Notwithstanding, Applicants have amended claims 22, 44, 57, 70, and 74 to include features of claim 72. Applicants respectfully submit that these amendments do not add new matter, and that claims 22-65 and 67-89 are allowable over any combinations of the cited art.

Applicants respectfully note that all of the claims are rejected for reasons of alleged obviousness. According to M.P.E.P. §2142, "[t]he examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness. If the examiner does not produce a *prima facie* case, the applicant is under no obligation to submit evidence of nonobviousness." M.P.E.P. §2142 further states that "[t]he key to supporting any rejection under 35 U.S.C. 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious." As recognized in M.P.E.P. §2142, "[t]he Supreme Court in *KSR International Co. v. Teleflex Inc.*, 127 S. Ct. 1727 (2007), 82 USPQ2d 1385, 1396 noted that the analysis supporting a rejection under 35 U.S.C. 103 should be made explicit." In addition, the Federal Circuit has made clear that "rejections on obviousness cannot be sustained with mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." *In re Kahn*, 441 F.3d 977, 988, 78

USPQ2d 1329, 1336 (Fed. Cir. 2006). See also *KSR*, 127 S. Ct. 1727 (2007), 82 USPQ2d at 1396.

Further, M.P.E.P. §2142 states that '[t]o establish prima facie obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). "All words in a claim must be considered in judging the patentability of that claim against the prior art." *In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970). If an independent claim is nonobvious under 35 U.S.C. 103, then any claim depending therefrom is nonobvious. *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988).' (emphasis added)

Applicants respectfully submit that the Office action has failed to establish a *prima facie* case of obviousness, in accordance with M.P.E.P. §2142, and that claims 22-65, 67-71, and 73-89 are allowable over the cited art for the reasons set forth during prosecution, and those presented below.

**I. The Proposed Combination Of Gillig And Sainton Does Not Render Claims 22, 23, 25, 38-45, 55-58, 63-65, 69-71, 74, 75, 77, And 89 Unpatentable**

Claims 22, 23, 25, 38-45, 55-58, 63-65, 69-71, 74, 75, 77, and 89 were rejected under 35 U.S.C. §103(a) as being unpatentable over Gillig in view of Sainton.

With regard to independent claim 70, Applicants respectfully submit that claim 70 has been amended to include features of claim 72 so that claim 70 now recites, "[a] system supporting communication over a plurality of wireless networks, the system comprising: first transceiver circuitry adapted for communication via a first wireless communication network; second transceiver circuitry adapted for communication via a second wireless communication network; a processing circuit for evaluating a cost of use of a communication network and managing operation of the transceiver circuitry in order to establish voice communication via at least one of the first and second wireless communication networks, the processing circuit selecting one of the first and second wireless communication networks based upon at least one of a mode of communication and the cost of use of the first and second communication networks; a buffer for buffering digital voice data; and wherein the processing circuit directs delivery of the

buffered digital voice data to conversion circuitry for converting digital voice data to an analog voice stream for the reproduction of voice after a delay that is adjustable by the processing circuit to accommodate variations in propagation delays over the selected one of the first and second wireless communication networks.” Applicants respectfully submit that the cited art does not teach all of the features of claim 70, and therefore does not render claim 70 unpatentable.

In regard to the features of dependent claim 72, now recited by claim 70, the Office asserted, at pages 13-14 of the Office action:

Regarding claim 72, the combination discloses claim 70, but buffer for buffering digital voice data, the processing circuit directing delivery of the buffered digital voice data to the conversion circuitry after a delay that is adjustable by the processing circuit to accommodate variations in propagation delays over a communication network.

What Gillig does not explicitly disclose is conversion circuitry for converting an analog voice stream to digital voice data and for converting digital voice data to an analog voice stream for the reproduction of voice.

Davis discloses conversion means to convert analog signals into digital signals (col. 5, lines 1-10, 6-67-col. 6, lines 1-44).

Initially, Applicants respectfully submit that the Office fails to identify any support in either Gillig or Sinton in regard to the features of claim 72, and relies only on Davis. Further, the Office fails to specifically identify the portions of Davis that allegedly teach each of the elements of Applicants’ claim 72, and simply asserts that “Davis discloses conversion means to convert analog signals into digital signals.” Applicants note that the citation by the Office is incomplete, in that the Office appears to cite col. 5, lines 1-10 and 6-67, which overlap. Applicants assume that the Office intended to identify Davis at col. 5, lines 1-10 and lines 64-67, and at col. 6, lines 1-44. If this is incorrect, Applicants respectfully request a corrected identification of the elements of Applicants’ claim 70, as amended.

Applicants respectfully submit that a review of the cited portions of Davis at col. 5, lines 1-10 and 64-67, and col. 6, lines 1-44 shows that Davis fails to teach or suggest the features of Applicants' amended claim 70, namely, "...wherein the processing circuit directs delivery of buffered digital voice data to conversion circuitry for converting digital voice data to an analog voice stream for the reproduction of voice after a delay that is adjustable by the processing circuit to accommodate variations in propagation delays over the selected one of the first and second wireless communication networks." Applicants respectfully submit that there is nothing in the cited portions of Davis that teaches or suggests at least these aspects of Applicants' claim 70.

Indeed, Applicants have been unable to find such teachings anywhere within Davis. Further, Applicants respectfully submit that the conclusory statement by the Office that "Davis discloses conversion means to convert analog signals into digital signals", even if true, fails to recognize or state that Davis all of the aspects of Applicants' claim 72 now recited by claim 70. For example, Applicants respectfully submit that Davis is silent with respect to "a processing circuit" that directs delivery of buffered digital voice data to conversion circuitry for converting digital voice data to an analog voice stream for the reproduction of voice after a delay. In addition, Davis fails to teach or suggest anything with regard to "variations in propagation delays ", or a "processing circuit" adjusting a delay to accommodate variations in propagation delays over one of first and second wireless communication networks selected by the "processing circuit." Applicants respectfully submit that such features are patentably distinct over the mere disclosure of "conversion means to convert analog signals into digital signals" that is asserted by the Office as being taught by Davis.

Applicants again respectfully submit that the Office cites support only from Davis and only at col. 5, lines 1-10 and 64-67, and col. 6, lines 1-44, and does not demonstrate that either or both of Gillig and/or Sainton teach or suggest these aspects of amended claim 70. Therefore, because the Davis does not teach or suggest these features of claim 70, and the Office has not asserted that either of Gillig and Sainton teach or suggest these features, Applicants respectfully submit that the Office has not shown where the proposed combination of Gillig, Sainton, and Davis teaches or suggests at least these aspects of Applicants' claim 70, as required by M.P.E.P. §2142,

and that claim 70 is not rendered unpatentable by Gillig, Sainton, and Davis. Further, because claims 71 and 73 depend from allowable claim 70, Applicants respectfully submit that claims 71 and 73 are also allowable, for at least the same reasons. Accordingly, Applicants respectfully request that the rejection of claims 70 and 71 under 35 U.S.C. §103(a) be reconsidered and withdrawn.

With regard to independent claims 22, 44, 57, and 74, Applicants respectfully submit that claims 22, 44, 57, and 74 are also rejected over the proposed combination of Gillig and Sainton. Applicants respectfully submit that independent claims 22, 44, 57, and 74 have been amended to recite features similar to that of claim 70, and are allowable for at least the reasons set forth above. Further, because claims 23-43, 45-56, 58-65 and 67-69, and 75-80 depend, respectively, from claims 22, 44, 57, and 74, Applicants respectfully submit that those claims are also allowable over Gillig and Sainton for at least the reasons set forth above with respect to claim 70.

With regard to dependent claims 41 and 56, the Office states that the proposed combination of Gillig and Sainton discloses "...wherein at least a portion of the information comprises data unrelated to the exchange of voice information (Gillig, col. 3, lines 48-56, provide information in form of data, which relates to data, other than voice)." With respect to dependent claim 64, the Office states that the cited art discloses "...wherein at least a portion of the information comprises data unrelated to the establishment or maintenance of voice communication (Gillig, col. 3, lines 48-56, provide information in form of data, which relates to data, other than voice)." See Office action at pages 4-6. Notably, the Office cites only Gillig. In addition, these conclusory statements are not accompanied by any interpretation of how and why Gillig teaches what is alleged. Gillig states, at cited col. 3, lines 48-56:

When operating as a cellular telephone, control signals 131 TX ENABLE and 132 RX ENABLE of microcomputer 130 enable cellular transmitter 124 and cellular receiver 122, respectively. In addition to control signals 131 and 132 to cellular transceiver 120, microcomputer 130 also monitors control signals 133 RSSI, 134 RX DATA and 135 TX DATA for detecting signal

strength, for detecting receive data and for sending transmit data, respectively, used in operation of cellular transceiver 120.

Applicants respectfully submit that this cited portion of Gillig simply teaches that control signals "131 TX ENABLE" and "132 RX ENABLE" of "microcomputer 130" enable "transmitter 124" and "receiver 122", respectively, and that control signals "133 RSSI", "134 RX DATA", and "135 TX DATA" are "...used in operation of cellular transceiver 120." Applicants respectfully submit that such "control signals" of Gillig do not, however, teach or suggest "...at least a portion of the information [communicated via at least one of the first wireless communication network and the second wireless communication network]" that is "...data unrelated to the exchange of voice information...", in accordance with Applicants' claims 41 and 56. Likewise, such "control signals" do not teach or suggest "...at least a portion of the information [communicated via the at least one wireless communication interface]" that is "...data unrelated to the establishment or maintenance of voice communication...", in accordance with Applicants' claim 64.

Applicants respectfully submit that this is so because the cited portion of Gillig does not teach or suggest that these "control signals" are communicated via at least one of the first wireless communication network and the second wireless communication network, as in claims 41 and 56, or communicated via the at least one wireless communication interface, as in claim 64. Instead, Gillig merely teaches that these "control signals" are "used in operation of cellular transceiver 120." Further, Applicants respectfully submit that the Office has not shown that that the "cellular transceiver" of Gillig is used for anything except voice calls. Therefore, Applicants respectfully submit that any such "control signals" would necessarily be data related to the communication of voice information, not "data unrelated to the exchange of voice information," as asserted by the Office. The Office fails to explain why the cited "control signals" of Gillig are not related to voice communication. Moreover, the Office does not provide the "explicit analysis", or the "clear articulation of the reason(s) why the claimed invention would have been obvious," required by M.P.E.P. §2142. Applicants

respectfully note that rejections on obviousness cannot be sustained with mere conclusory statements. Applicants again respectfully note that the Office cites only Gillig as support for the rejection of claims 41, 56, and 64, and does not assert that Sainton teaches or suggests anything with respect to these aspects of Applicants' claims 41, 56, and 64. Thus, for at least these reasons, Applicants respectfully submit that the claims 41, 56, and 64 are not rendered unpatentable by the proposed combination of Gillig and Sainton, and that claims 41, 56, and 64 are independently allowable over the cited art.

Therefore, for at least the reasons set forth above, Applicants respectfully submit that the Office has not established a *prima facie* case of obviousness, as required by M.P.E.P. §2142, that the proposed combination of references does not render unpatentable claims 22, 44, 57, 70, and 74 or any claims that depend therefrom, and that claims 22-65 and 67-89 are allowable over Gillig and Sainton. In addition, Applicants have shown that claims 41, 56, and 64 are independently allowable over the cited art. Accordingly, Applicants respectfully request that the rejection of claims 22, 23, 25, 38-45, 55-58, 63-65, 69-71, 74, 75, 77, and 89 under 35 U.S.C. §103(a) be reconsidered and withdrawn.

## **II. The Proposed Combination Of Gillig, Sainton, And Allard Does Not Render Claims 33, 34, 53, 54, 84, And 85 Unpatentable**

Claims 33, 34, 53, 54, 84, and 85 were rejected under 35 U.S.C. §103(a) as being unpatentable over Gillig and Sainton, in view of Allard.

Claims 33 and 34, 53 and 54, and 84 and 85 depend, respectively, from independent claims 22, 44, and 74. Applicants respectfully submit that claims 22, 44, and 74 are allowable over the proposed combination of references in that the Office has not shown how and why Allard remedies the shortcomings of Gillig and Sainton, set forth above. Because claims 22, 44, and 74 are allowable over Gillig, Sainton, and Allard, Applicants respectfully submit that claims 33, 34, 53, 54, 84, and 85 are also allowable, for at least the same reasons. Claims 33, 34, 53, 54, 84, and 85 are also allowable for additional reasons.



The Office asserts, at page 7:

Gillig discloses the device of claim 22, but wherein at least one of the first receiver and transmitter and the second receiver and transmitter is disposed on a user removable circuit card and compliant with PCMCIA.

Allard teaches a cellular phone with mechanisms to accept a PCMCIA card (Figure 2, #57; col. 3, lines 58-67-col. 4, lines 1-14).

Allard teaches a cellular phone with mechanisms to accept a PCMCIA card, to provide transmission via the internet as an alternative route.

Applicants respectfully submit that the cited portions of Allard at element "57" of Fig. 2, col. 3, lines 58-67, and col. 4, lines 1-14 simply teach that the "personal communicator 10" of Allard accepts a "PCMCIA card". There is nothing in the cited disclosure of Allard, however, that teaches "...wherein at least one of the first [wireless] receiver and [wireless] transmitter and the second [wireless] receiver and [wireless] transmitter is disposed on a user removable circuit card," as claimed. Applicants respectfully submit that the mere teaching of a "PCMCIA card" fails to teach or suggest that a "PCMCIA card" comprises one of a "first [wireless] receiver and [wireless] transmitter" and a "second [wireless] receiver and [wireless] transmitter," as claimed. Further, the alleged teaching of a "PCMCIA card" that "provide[s] transmission via the internet as an alternative route" by Allard, is different from and does not teach or suggest, at least, "...wherein at least one of the first [wireless] receiver and [wireless] transmitter and the second [wireless] receiver and [wireless] transmitter is disposed on a user removable circuit card," as claimed. In addition, Applicants respectfully submit that the Office has not asserted that either Gillig or Sainton compensate for these shortcomings of Allard. Therefore, for at least these reasons, Applicants respectfully submit that the Office has not presented a *prima facie* case of obviousness with respect to claims 33, 34, which depend from claim 22, and similarly with respect to claims 53 and 54, and 84 and 85, that depend from claims 44 and 74, respectively. Therefore, Applicants respectfully submit that claims 33, 34, 53, 54, 84, and 85 are independently allowable over the cited art.

Accordingly, for at least the reasons set forth above, Applicants respectfully submit that claims 33, 34, 53, 54, 84, and 85 are allowable over the proposed combination of references, and respectfully request that the rejection of claims 33, 34, 53, 54, 84, and 85 under 35 U.S.C. §103(a) be reconsidered and withdrawn.

**III. The Proposed Combinations Of Gillig And Sainton, With Any Of Davis, Rom, Antunes, Sonnendorfer, Perkins, And Fishbine Do Not Render Claims 24, 26-32, 35-37, 46-52, 59-62, 67, 68, 76, 78-83, And 86-88 Unpatentable**

Claims 24 and 76 were rejected under 35 U.S.C. §103(a) as being unpatentable over Gillig and Sainton, in view of Davis. Claims 26, 27, 46, 47, 59, 60, 78, and 79 were rejected under 35 U.S.C. §103(a) as being unpatentable over Gillig and Sainton, in view of Rom. Claims 28, 29, 48, 49, 61, 80, and 81 were rejected under 35 U.S.C. §103(a) as being unpatentable over Gillig and Sainton, in view of Antunes. Claims 30 and 50 were rejected under 35 U.S.C. §103(a) as being unpatentable over Gillig and Sainton, in view of Sonnendorfer. Claims 31, 32, 51, 52, 62, 82, and 83 were rejected under 35 U.S.C. §103(a) as being unpatentable over Gillig and Sainton, in view of Perkins. Claims 35-37, 67, 68, and 86-88 were rejected under 35 U.S.C. §103(a) as being unpatentable over Gillig and Sainton, in view of Fishbine.

Applicants respectfully submit that claims 24, 26-32, and 35-37 depend from independent claim 22, claims 46-51 and 52 depend from independent claim 44, claims 59, 60-62, 67, and 68 depend from independent claim 57, and claims 76, 78-83, and 86-88 depend from independent claim 74. Applicants respectfully submit that independent claims 22, 44, 57, and 74 are allowable over the proposed combinations of references, in that the Office has not shown that any of Davis, Rom, Antunes, Sonnendorfer, Perkins, and/or Fishbine remedy the shortcomings of Gillig and Sainton, set forth above. Because claims 24, 26-32, and 35-37, claims 46-52, claims 59-62, 67, and 68, and claims 76, 78-83, and 86-88 depend from allowable claims 22, 44, 57, and 74, Applicants respectfully submit that those claims are also allowable, for at least the same reasons. Accordingly, Applicants respectfully request that the rejections of claims 24, 26-32, 35-37, 46-52, 59-62, 67, 68, 76, 78-83, and 86-88 under 35 U.S.C. §103(a) be reconsidered and withdrawn.

## Conclusion

In general, the Office Action makes various statements regarding the claims and the cited references that are now moot in light of the above. Thus, the Applicants will not address such statements at the present time. However, Applicants expressly reserve the right to challenge such statements in the future should the need arise (e.g., if such statements should become relevant by appearing in a rejection of any current or future claim).

The Commissioner is hereby authorized to charge any fees required by this submission, or to credit any overpayment to the Deposit Account of McAndrews, Held & Malloy, Ltd., Account No. 13-0017.

An early Office Action on the merits and allowance of claims 22-65 and 67-71 and 73-89 is respectfully requested.

Respectfully submitted,

Dated: May 11, 2009  
McAndrews, Held & Malloy, Ltd.  
500 West Madison Street, 34th Floor  
Chicago, Illinois 60661  
(312) 775-8000

By /Kevin E. Borg/  
Kevin E. Borg  
Reg. No. 51,486